

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

FRANCIS M. BRILL,

Plaintiff,

v.

GARY M. LALOR,

Defendant.

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C.A. No. 2006-01-152

Submitted: May 26, 2006

Decided: June 6, 2006

Mr. Francis M. Brill
400 West Clearview Ave.
Wilmington, DE 19809
Pro se Plaintiff

Mr. Gary M. Lalor
305 Prospect Hill
Frederiksted, V.I. 00840
Pro se Defendant

ORDER

1. The instant dispute arises out of an alleged breach of employment contract. On January 6, 2006 Francis M. Brill (“plaintiff”) filed a Complaint against Gary M. Lalor (“defendant”) alleging defendant failed to pay to plaintiff three paychecks for work completed during the months of October and November, 2005 totaling \$600.00. Plaintiff is a resident of the State of Delaware and a former employee of defendant at the Butler Bay Plantation (“Butler Bay”) in Frederiksted, Virgin Islands. Plaintiff also seeks \$25,000.00 in damages resulting from mental anguish due to defendant’s failure to pay plaintiff in time for the 2005 holiday season.¹

2. The docket reflects a summons was issued for service by the Sheriff of Kent County on January 11, 2006. On February 7, 2006 plaintiff attempted to file a

¹ The instant motion was on the Civil Motion calendar on May 26, 2006.

Motion for Entry of Default Judgment, but the Clerk's office informed him that his Motion was insufficient pursuant to the requirements of Civil Rules 55(b)(1) and (2) of the Civil Rules Governing the Court of Common Pleas ("Civil Rules"). On February 13, 2006, the docket reflects a Sheriff's Return was received and that the Secretary of State accepted personal service on behalf of defendant on January 30, 2006. On February 28, 2006 the docket reflects that plaintiff filed an amendment to the Complaint and an Affidavit of Non-Resident Service. However, the file does not contain a clocked-in copy of these documents, only what appears to be a fax or photocopy. Nonetheless, it appears that plaintiff has complied with the requirements for service of process under the Civil Rules as well as 10 Del. C. § 3104 regarding Personal Jurisdiction by acts of nonresidents.

3. On March 21, 2006 plaintiff filed a Notice and Motion of Entry of Default Judgment, and this was noticed for April 7, 2006. On April 7, 2006 neither party appeared for the hearing, and the docket reflects the Court considered the Motion as withdrawn. On April 7, 2006, the docket notation indicates defendant mailed a letter to the Court acknowledging receipt of plaintiff's Motion for Entry of Default questioning its authenticity and requesting clarification from the Clerk of the Court. In response, the Clerk mailed to defendant a packet titled, "How to File an Answer." On April 17, 2006 plaintiff filed a Notice for Re-Motion for Entry of Default Judgment. This Court heard plaintiff's Motion on May 26, 2006 and reserved decision.

4. Pursuant to Civil Rule 55(c)(2), this Court may enter Default Judgment "...[w]hen a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend" as provided by the Rules. To date, defendant has

failed to file an Answer, as his April 7, 2006 letter was improper in form pursuant to Civil Rule 8.

5. Therefore, the Court concludes, after conducting a diligent review of the civil docket and record, that Judgment in the amount plead of \$600.00 in lost employment wages shall be entered against defendant as a judgment. Plaintiff has neither stated grounds for nor has he provided any legal or factual authority in order for this Court to enter a judgment for the excess alleged punitive damages on the basis of mental anguish. That claim is therefore dismissed. C.C.P. Civ. R.12(b)(6). Plaintiff's Motion for Default Judgment is GRANTED in the amount of \$600.00 plus pre-judgment and post-judgment interest at the legal rate, 6 *Del. C. §2301 et seq.*, as well as the court costs.

IT IS SO ORDERED this 6th day of June, 2006.

John K. Welch
Judge

cc: Rebecca Dutton, Civil Case Processor
Court of Common Pleas